**IN THE HIGH COURT OF JUDICATURE**
**AT BOMBAY**
**APPELLATE CRIMINAL JURISDICTION**

**CRIMINAL APPEAL NO.868 OF 2001**

1.Shivaji Mahadeo Hulge
Age 18 years
2.Tanaji Mahadeo Hulage
Age 20 years
3.Dhanaji Mahadeo Hulage
22 years
4.Chandrakant Mahadeo Hulage
Age 38 years ...Appellants
All R/o.Bembale, Tal: Madha, Dist: Solapur
At present Lodged in Yervada Central Prison, Pune.)

Vs.

The State of Maharashtra ...Respondent

Mr.S.R.Chitnis, Sr. Advocate with Mr. Ujwal R. Agandsurve for the Appellants
Mr. A.G.Gadkari, A.P.P for the State

**CORAM: SHRI J.N.PATEL &**
**SMT. ROSHAN DALVI, JJ.**
**DATED: 6TH JULY, 2006**

**ORAL JUDGMENT (PER SMT. ROSHAN DALVI, J.)**

1. The four accused are relatives. They are neighbors of the deceased. They have been charged with having committed murder of the deceased one Bhagwan Narhari

Kasar on 21st November, 2000 at 10.00 a.m under a mango tree situated on his land at Gat No.229 village Bembale, Tal: Madha, Dist: Solapur by intentionally and knowingly causing his death and thereby committing offence punishable under Section 302 r.w. 34 of Indian Penal Code.

2. They are also charged with having voluntarily caused grievous hurt to the said deceased on the above said time and place in furtherance of their common intention, thereby committing offence punishable under Section 325 r.w. Section 34 of the Indian Penal Code.

3. The prosecution examined 10 witnesses including 2 eye witnesses, the daughter-in-law and the son of the deceased respectively examined as P.W.1 and P.W.2, a nephew as a panch for execution of spot panchanama examined as P.W.6, 2 Medical Officers showing the injuries to the accused examined as P.W.7 and P.W.8 and 2 Police Officers examined as P.W.9 and P.W.10.

4. The prosecution also examined 3 panchas for proving the recovery of articles at the instance of accused/appellants in the aforesaid transaction, but who have all turned hostile rendering that portion of the evidence useless. From the evidence of the eye witnesses read with medical injuries the

learned Trial Judge has convicted all the 4 accused under the aforesaid Sections of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life with a fine of Rs.1000/- and in default further rigorous imprisonment for one year under the charge of murder with common intention and to suffer rigorous imprisonment for 3 years with a fine of Rs.1000/- and in default to undergo rigorous imprisonment for 6 months for the offence of voluntarily causing grievous hurt.

5. The appreciation of evidence essentially of the 2 eye witnesses P.W.1 and 2 is the main requirement in this case.

6. Their evidence shows that there was a dispute between the accused and the deceased over 1 acre of land. It was sought to be transferred by the daughter of the deceased, one Pushpa, to the mother of the accused Nos.1,2 and 3, one Suman, and it was sought to be re-transfered to the family of the deceased.

7. The relationship of the parties, as also the fact of the dispute for the said land, has been admitted by the accused, in the statement of the accused.

8. The incident has been vividly described by P.W.1, the

daughter-in-law of the deceased. She has deposed that the deceased was sitting on the bund in his land when the accused came and assaulted the deceased. She has described the specific roles of all the 4 accused in her evidence. The accused no.1 is stated to have hit the deceased with an iron bar, accused nos.2 and 3 with sticks and accused no.4 with an axe on the head of the deceased. When she went to rescue the deceased, the accused nos.1 and 2 assaulted her. Accused no.1 gave a blow on her left hand with an iron bar and accused no.2 assaulted her with stick all over the body. She ran to the house of Babu Ganpat where upon the accused followed. They broke open the door and pulled her out and assaulted her. The deceased was made to lie there on the spot till 2 p.m., when her brother-in-law Ragunath (P.W.2) having informed the police, the police came in a jeep. The deceased died while on the way to the hospital.

9. She has deposed in her cross examination that the incident took place at 10.00 a.m., when she heard shouts near her house and went out running towards the deceased.

10. She has deposed in her examination-in-chief that the deceased was lying on the spot up to 2 p.m. The timings are not challenged by the accused. It shows that the deceased

could not get medical aid for as long as 4 hours after the incident.

11. Ragunath, the brother-in-law of P.W.1 who is examined as P.W.2 has essentially corroborated this eye witness account. He, however, saw the incident from the side of the canal. He found it pointless to intervene. He instead went to the police station and registered his complaint. The police did not have a vehicle and hence, he had to arrange for a private vehicle. By the time the private vehicle arrived, the police also had availability of the jeep, in which P.W.2 brought the police to the spot.

12. The evidence of P.W.2 seen from a different angle shows the incident in the same light.

13. The evidence of P.W.2 shows that he had gone to the canal to start his work while his father was in front of the house. His cousin, one Madhav, came running and informed him that the accused had come to beat them. He has deposed that he had seen the accused beating his father from near the canal which was about 400 ft. away. He also saw the accused beating his sister-in-law Chhaya. He has also described the weapons of each of the accused used in the assault. Indeed though he used his presence of mind to

obtain police aid instead of intervening in the scuffle, he was too late to arrive. Consequently his father, injured and bleeding, was left in the field till about 2 p.m. without medical help or police intervention.

14. The accused persons have sought to challenge the evidence of eye witness p.w. 1 and p.w.2 by cross examining them on the nature of crop in the field of the deceased. It was a crop of sugar-cane. The cross examination shows that it was as high as a height of a man. From such evidence the eye witness account is sought to be discredited. However, both these witnesses stood their ground that the deceased was sitting on the bund. The accused persons had come in a tractor. The deceased had shouted. P.W.1 had heard and ran out. Both were assaulted. Therefore, merely the size of the sugar-cane crop would not show that the incident, as deposed, could not have been witnessed by these witnesses.

15. The specific eye witness account is of accused no.4 dealing one blow on the head of the deceased with an axe. That was a blow on one of the vital parts. This was followed by other assaults with iron bar and stick resulting in other injuries on non-vital parts of the deceased. The witnesses have stood their ground in cross examination.

16. It is argued on behalf of the accused that they were partisan witnesses and hence their evidence was necessarily required to be corroborated. The corroboration is found in the medical record.

17. P.W.Nos.7 and 8 are the Medical Officers. P.W.7 carried out the Postmortem examination. The Postmortem report is at Exh-39. The Postmortem report fully corroborates the eye witness account. It shows the sutured wound in the mid frontal region at the forehead of 2 ½" x 1/2" x 1/4" which was bone-deep along with reddish swelling.

18. The evidence of P.W.7 further shows the result of the internal injuries, which shows that he found a clot in the sternal bone, swelling and the laceration to mid-lobes of both lungs which are documented in the Postmortem notes Exhibit-39. His evidence shows that there were injuries to the vital organs and those injuries were sufficient to cause the death of a person. The other injuries are simple and caused with a hard and blunt object. His cross examination shows that several injuries were simple, curable and could be possibly caused by a knife and could have been caused by a fall. His cross examination shows that if immediate

treatment was given to the patient, he could have survived and further shows that even with immediate aid, patient would not have survived. He could have survived only depending upon his own resistance. The fact remains that the patient did not get immediate treatment.

19. The evidence of P.W.No.8, the Medical Superintendent, shows various injuries suffered by the deceased. Surprisingly the injury on the forehead finds no place in his evidence. Much is sought to be made about the fact that his evidence shows no injury to the vital parts and injury no.2 could be caused by iron bar and other injuries by a stick. There is no mention of the use of the axe for any of the injuries. His cross examination shows that they could have been caused by a fall. It is sought to be argued that because the medical evidence shows no injuries on the vital parts, the Court must accept that the injuries were neither sufficient to cause death nor knowingly or intentionally caused upon any

of the vital parts of the body by the accused knowing that it would cause his death.

20. The Medico Legal Certificate proved by P.W.No.8 under Exhibit-41 shows the injuries of the complainant P.W. No.1

shows multiple contusions on the scapular and inter scapular areas. Out of the 7 injuries mentioned in the certificate, one is shown to be grievous. That injury is on the left thumb and index and thumb area. This Certificate shows the weapons used by the co-accused as reported by the injured. However, none of the injuries has resulted in any fracture.

21. The Postmortem report specifically shows interalia the sutured wound on the forehead. The cause of death in the Postmortem report is haemorhagic shock due to multiple injuries to vital organs. The Court cannot ignore the most grievous injury suffered by the deceased which actually resulted in his death even prior to admission to the hospital.

22. The C.A's report Exhibit 51 shows blood group **'O'**, which is a very uncommon blood group on, interalia, the bandi and dhoti of the deceased and on the bamboo stick. Sticks were used by accused nos. 2 and 3 in the incident. Surprisingly the axe shows no blood detected thereon and the iron rod shows inconclusive blood group. Nevertheless atleast one of the weapons sent to the C.A. Shows the same blood group.

23. It is the case of the prosecution that the weapons used by the accused were recovered at the instance of the accused in the presence of the panchas. P.W. Nos.3,4 & 5 are the panchas examined by the prosecution, all of whom have turned hostile. The recovery of the weapons need not therefore, be considered.

24. The case of the prosecution is therefore, be seen only from the eye witness's account considered along with the medical evidence.

25. It is argued that the P.W. Nos.1 & 2 are partisan witnesses and therefore, their evidence should not be accepted without corroboration. It is further argued that the medical certificate Exhibit-41 does not corroborate their oral version. This argument misses and ignores the most vital document which is a Postmortem note illustrating the injuries of the deceased is also showing the cause of his death. It is therefore, seen that the evidence of P.W.Nos.1 and 2 is indeed corroborated.

26. The fact that they are relatives of the deceased does not show that their evidence suffers from incredibility. There would be no reason for them to implicate the accused and not the real culprit for the death of their father-in-law and

father respectively. The admitted dispute for the land between the 2 families bares out the cause for the incident. The fact that the accused not only assaulted the deceased but also assaulted P.W.1 who tried to intervene to help the deceased and followed her into the house and broke open the lock and thereafter also assaulted her show the tenor of the act. This further lends support to the fact that the deceased was made to lie bleeding for a long time whilst the accused even assaulted P.W.No.1 who tried to intervene.

27. The evidence and the incident is sufficiently corroborated. It is seen by 2 witnesses from different angles. It is reflected in the Postmortem notes. It shows a pre-planned action of the accused with common intention in assaulting the deceased who was sitting alone on a bund in his field.

28. It is argued on behalf of the accused that at best punishment under Section 304 (II) of I.P.C can only be awarded. We find absolutely no reason for invoking that section. We find that there was neither any provocation, nor any altercation, nor any mistake in the assaults on the deceased. There is no reason to invoke the provisions of Section 304(II) in the case of pre-planned consorted action of all the accused together.

29. Mr.Chitnis drew our attention to the case of Tarsem Singh and others Vs. State of Punjab reported in (2002) 2 Supreme Court Cases, 673. That was the case considered under Section 325 of I.P.C alone in which the injuries were minor in nature and were not deep enough to indicate that the accused had knowledge that they could cause death. The incident took place all of a sudden, without any personal enmity with the deceased. The attack was observed to be spontaneous. Hence, though the trial Court found that one of the injury was severe enough to cause death in the normal course, the reduction of sentence by the High Court was held proper, but further reduction was held not permissible.

30. The learned Sessions Judge has correctly appreciated the evidence and awarded the sentence under Section 302 r.w. Section 34 as well as Section 325 r.w. Section 34 of the Indian Penal Code upon the accused. We find absolutely no reason to interfere with the said finding.

31. Under the circumstances the appeals fails and is dismissed.

32. The appellant/original accused no.3 Dhanaji Mahadeo Hulage, who is on bail to surrender before the Trial

Court within a period of 4 weeks. If the appellant/original accused no.3 fails to surrender, the trial Court to take necessary steps to get him arrested and sent to prison to undergo the sentence.

**(SMT.ROSHAN DALVI, J.)** **(SHRI. J.N.PATEL,J)**